

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
IN THE MATTER OF THE COMPLAINT

Civil Action No.: 08 CV 3686

of

TRARA A. PINAND, owner of a 21' 1999
Rivera Cruisers Pontoon Boat for Exoneration
from or Limitation of Liability,

ANSWER AND CLAIM

Petitioner.

Claimant, Frank J. Dieber, by his attorneys, Rubin, Fiorella & Friedman LLP, answering the Complaint of Petitioner Tara A. Pinand, owner of a 21' 1999 Rivera Cruisers Pontoon Boat for Exoneration from or Limitation of Liability, alleges as follows:

1. Paragraph "1" of the Complaint contains conclusions of law, to which, a responsive pleading is not required. All conclusions of law are appropriately referred to the honorable Court.
2. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 2 of the Complaint.
3. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 3 of the Complaint.
4. Admits the allegations in Paragraph 4 of the Complaint.
5. Denies the allegations in Paragraph 5 of the Complaint.
6. Denies the allegations in Paragraph 6 of the Complaint.
7. Denies the allegations in Paragraph 7 of the Complaint.
8. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 8 of the Complaint.

9. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 9 of the Complaint.
10. Denies the allegations in Paragraph 10 of the Complaint.
11. Admits the allegations in Paragraph 11 of the Complaint.
12. Denies the allegations in Paragraph 12 of the Complaint.
13. Denies the allegations in Paragraph 13 of the Complaint.
14. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 14 of the Complaint.
15. Denies sufficient knowledge or information by which he can admit or deny the allegations in Paragraph 15 of the Complaint.
16. Admits the allegations in Paragraph 16 of the Complaint.
17. Denies the allegations in Paragraph 17 of the Complaint.
18. Denies the allegations in Paragraph 18 of the Complaint.
19. Denies sufficient knowledge or information by which he can admit or deny the allegations in Paragraph 19 of the Complaint.

FIRST AFFIRMATIVE DEFENSE

Petitioner's Complaint for Limitation of Liability must be dismissed as it was filed more than 6 months after Petitioner had written notice that claims would exceed the value of the vessel.

SECOND AFFIRMATIVE DEFENSE

Petitioner's Complaint fails to state a claim upon which relief may be granted.

THIRD AFFIRMATIVE DEFENSE

The faults, acts, and/or omissions leading to Angela Norcia's alleged injuries underlying this claim were within the privity and knowledge of Petitioner.

FOURTH AFFIRMATIVE DEFENSE

The security petitioner has posted is inadequate, and the court should order appropriate security to be filed in accordance with Supplemental Rule F.

FIFTH AFFIRMATIVE DEFENSE

Petitioner's proposed valuation of the vessel understates its value and the court should order petitioner to have a fair, adequate and prompt appraisal of the value of the vessel at the time of the incident.

SIXTH AFFIRMATIVE DEFENSE

The circumstances and activities culminating in the alleged injuries to Angela Norcia were not brought about by any negligence and/or fault on the part of Claimant Frank J. Dieber, but rather, through breaches, negligence and/or fault of Petitioner herein, and/or the unseaworthiness of the Petitioner's vessel.

CLAIM OF FRANK J. DIEBER

Claimant Frank J. Dieber, as and for his claim against Petitioner, states as follows:

1. At all relevant times, Claimant Frank J. Dieber was the owner of a 1988 20-foot Formula SR1 vessel (the "Vessel").
2. At all relevant times, Petitioner, Tara A. Pinand was the owner of a 20-foot 1999 Rivera Cruisers Pontoon Boat ("Pontoon Boat").
3. At all relevant times, Angela Norcia ("Norcia") was a passenger of the Pontoon Boat.

4. On or about June 29, 2007, a collision occurred between the Vessel and the Pontoon Boat on the navigable waters of Greenwood Lake, New York.
5. At the time of the aforesaid incident, Claimant was not on board the Vessel.
6. At the time of the aforesaid incident, Claimant was not operating the Vessel.
7. Subsequently, Angela M. Norcia commenced an action in the Supreme Court of the State of New York, County of Orange, bearing index No. 7230/07, against the Claimant and others for alleged injuries arising out of this incident.
8. Any claim or claims of Angela M. Norcia were not due to any fault, neglect, or want of care on the part of Claimant and occurred without Claimant's privity or knowledge.
9. If Norcia was caused to sustain damages and injuries at the time and place set forth in Norcia's Claim other than by Norcia's own fault, then said damages and injuries were sustained by reason of the carelessness, recklessness or negligence, negligent entrustment, negligent supervision, culpable conduct, violations of statutory and/or nautical rules of the road by Petitioner Tara A. Pinand with no negligence of Claimant.
10. That by reason of the foregoing, Petitioner is liable in full for indemnification and/or contribution to Claimant Frank J. Dieber in the event of a recovery herein by Norcia, or for that proportion thereof caused by the relative responsibility of Petitioner, and Petitioner is bound to pay any and all costs, fees and disbursements.

WHEREFORE, Claimant Frank J. Dieber prays:

1. that an order be entered herein that Petitioner Tara A. Pinand is not entitled

to exoneration from liability herein;

2. that an order be entered herein that Petitioner Tara A. Pinand is not entitled to limitation of liability herein; and
3. that Petitioner Tara A. Pinand be held liable for contribution and/or common law indemnity, jointly and severally along with costs, disbursements and any other different relief the Court deems just and equitable.

Dated: New York, New York
June 9, 2008

Respectfully submitted,

RUBIN, FIORELLA & FRIEDMAN, LLP



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